IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10377 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AJAJ HUSAIN @ AJJU ABDUL JABBAR ANSARI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UR BHATT, AGP, Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Ahmedabad City on 5th August, 2000 in exercise of powers conferred upon

him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The petitioner came to be detained on 5th of August, 2000 in pursuanc eof the said order.

2. Grounds of detention reveals that in all four offences before Amraiwadi Police Station were registered against the petitioner under Sections 379, 447 of the IPC. Offences came to be registered on 2nd June, 12th July, 21st July and 1st of August, 2000 respectively. The allegation was that the petitioner was indulged in theft of vehicles like motorcycles. Placing reliance on the investigation on the above said four offences and the statements of two witnesses, who on assurance of anonymity offered their statemes against the petitioner, the detaining authority came to the conclusion that the petitioner was a "bootlegger" within the meaning of Section 2(b) of the PASA Act. Therefore, the impugned order was passed against the petitioner.

3. Learned Advocate Ms. Krishna Mishra for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. From amongst various grounds raised to challenge the detention order, it was vehemently urged that the petitioner was in judicial custody while passing the order of detention in three of the offences registered against the petitioner and in one of the offences the petitioner was in police remand. It was urged that this fact was not looked by the detaining authority. It was also urged that the provision under Section 437(5) of the Cr.P.C. was not considered by the detaining authority properly. It was urged that for these reasons alone, the order of detention is required to be set aside.

5. Having regard to the above mentioned contentions on behalf of the petitioner, it clearly appears that the petitioner was in judicial custody in three crimes registered against the petitioner and in one of the offences registered against the petitioner he was on police remand. That necessarily denotes that right from 2nd JUne, 2000, the petitioner was in custody and the order came to be passed on 05th of August,2000. The purpose of PASA Act is to withdraw a person concerned from the society and place him behind the bar so as to prevent him from obstructing to public peace. The facts which are mentioned in the order of detention itself suggests that immediately preceding the passing of the order, the petitioner was in custody and was not capable of continuing his so called illegal or anti social

activities. This is the total non-application of mind on the part of the detaining authority qua fact of the case, vitiating the order of detention. Further the detaining authority anticipated that the petitioner was likely to be released on bail on filing of an application and since thereafter the proceedings for the cancellation of bail under Section 437(5) of the Cr.P.C. was likely to take time, there was no other alternative except to pass the orders under the PASA Act. The detaining authority has wrongly considered the import and intent of the provisions of cancellation of bail and, therefore also, the order impugned is without applciation of mind and is requried to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 5th of August, , 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Ajaj Husain @ Ajju Abdul Jabbar Ansari, is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair